



BOARD OF APPEALS
Diane R. Gordon, Co-Chair
Harry Miller, Co-Chair
Bailey S. Silbert

Town of Brookline

Massachusetts

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2210 Fax (617) 730-2248
Patrick J. Ward, Secretary

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO: 070001

Petitioners, Donna Mathais and Jonathan Jacobson applied to the Board of Appeals for permission to establish and maintain a professional medical office within their place of residence at 101 Clark Road.

On December 21, 2006, the Board of Appeals met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed February 8, 2007, at 7:00 p.m. in the Selectmen's Hearing Room on the sixth floor of the Town Hall as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioners, to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published January 25 and February 1, 2007 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

TOWN OF BROOKLINE
MASSACHUSETTS
BOARD OF APPEALS
NOTICE OF HEARING

Pursuant to M.G.L., C.39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: **Donna Mathias and Jonathan Jacobson**

Location of Premises: **101 CLARK RD BRKL**

Date of Hearing: **02/08/2007**

Time of Hearing: **07:00 p.m.**

Place of Hearing: **Selectmen's Hearing Room, 6th. Floor**

A public hearing will be held for a special permit and/or variance from:

4.05.1.b.1; Restrictions on Accessory Uses in Residence Districts, Special Permit Required

4.07; Table of Use Regulations, Use #58 Special Permit Required

6.02.5.b; Off Street Parking Regulations, Variance Required

8.02.2; Alteration or Extension, Special Permit Required, of the Zoning By-Law to establish and maintain a professional office within a place of residence per plans at **101 CLARK RD BRKL**.

Said Premise located in a **S-10** District.

The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.

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At the time and place specified in the notice, a public hearing was held by this Board. Present at the hearing was Chair, Lawrence Kaplan and Board members Enid Starr and Bailey Silbert. Attorney Steven D. Weil of Cohen and Fierman LLP, 4 Faneuil Hall Marketplace, Boston, MA presented the case before the Board.

Attorney Weil stated that Dr. Mathias lives in the home and also has a psychotherapy practice. He said that having the practice in the home will allow Dr. Mathias to conduct her business as well as care for her family which includes her husband, Jonathan, child and ailing mother. Attorney Weil stated

that based upon Planning Department research, similar uses in residences have been approved in the past. The project will involve the reconfiguration of walls in the basement to accommodate the needs of the practice. The created office, waiting room and bathroom would be approximately 300 square feet. Although there will be no external evidence of the practice, the Zoning By-Law requires three parking spaces per physician. Attorney Weil showed photographs of the driveway leading to the two-car garage, attached but behind the home. He stated that due to the size of the driveway it will accommodate the three spaces required by the by-law. There is adequate space in the driveway to allow visitors to turn-around before leaving therefore eliminating the need to back on to the thoroughfare. The petitioner plans to work Monday through Friday about 20 hours per week, the hours would be between 8:00 a.m. and 7:00 p.m. and an occasional weekend, if needed. Patients will enter the office by way of the rear door at the grade-level driveway. Although Dr. Mathias does not serve groups in her practice, she does occasionally see families and in an effort not to be in violation of any subsequent Special Permit he requested that Condition #1 proposed by the Planning Board be amended to include families. Attorney Weil submitted a petition in support of the proposal signed by six neighbors to the subject property.

The Chair then asked whether anyone wished to speak in favor or in opposition to the proposal. No-one rose to speak.

Planner, Lara Curtis, then reviewed the comments and recommendations of the Planning Board. She stated that the applicant proposes to establish a psychiatrist's office in the basement of the dwelling. The basement was previously used for a day-care center and the applicant proposes to make interior alterations to make the area usable as an office for individual psychotherapy and couples

therapy sessions. The applicant would use the office on a part-time basis, 15 to 20 hours per week, between 8:00 a.m. and 7:00 p.m., one patient or couple at a time.

Ms. Curtis outlined the relief required as follows:

Section 4.07, Use #58 – A special permit is required to establish a physician's office within his or her place of residence.

Section 6.02.5.b – A medical office requires three parking spaces per doctor; this requirement can be modified by special permit according to **Section 4.05.1.b.1** since this is an accessory use within a residence district. Currently, the subject property has two parking spaces in an attached garage, with additional room for vehicles in the side driveway.

Section 8.02.2 – A special permit is required to alter a non-conforming structure or use.

Ms. Curtis stated that the Planning Board supports the application to establish a psychiatrist's office within the principal residence of the applicant. The required modifications to the dwelling to establish the office are minor, and if limited to one patient at a time during daytime hours, the parking impact should be minimal. The existing driveway provides enough room for several vehicles to park in a tandem manner outside of the two-car garage, and existing shrubbery along the driveway would shield the view of parked vehicles from the side abutter at 95 Clark Road. Though parking appears to be adequate, a parking plan should be submitted indicating where patient parking will occur on the lot. Additionally, in order to ensure the use is appropriate for the neighborhood and does not last indefinitely under multiple owners, a time limit of five years, subject to renewal, should be attached to the decision. Therefore, the Planning Board recommends approval of the application, subject to the following conditions:

- 1. No more than one patient or couple shall be at the office at the same time.**
- 2. The psychiatrist's office hours shall not commence before 8:00 a.m., nor extend beyond 7 p.m., nor be in operation more than 20 hours per week.**

3. **Prior to issuance of a certificate of occupancy, a parking plan indicating where patient parking will be provided on the lot shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
4. **This relief shall expire in five years from the date of this decision unless the Board of Appeals votes to extend the same.**
5. **Prior to obtaining a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: 1) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

The Chair called on Frank Hitchcock representing the Building Department. Mr. Hitchcock stated that the relief requested could be granted by Special Permit under **4.07** for a home office under use #58 of the Zoning by-law. He also stated that since the existing drive was too close to the lot line according to the by-law, a Special Permit under **8.02.2** could be granted since the addition of vehicles to the drive would extend a pre-existing, non-conforming condition. He stated that even though they were initially cited for parking relief, it was probably not needed since they have shown that they have adequate parking under the by-law. Mr. Hitchcock stated that the Building Department had no objections to the proposal, the relief required or the amended conditions recommended by the Planning Board.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant Special Permits under **Sections 4.07 use#58, 6.02.5.b and 8.02.2** of the Zoning Bylaw and makes the following findings pursuant to **Section 9.05**:

- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

- e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

After discussion, the Board agreed unanimously to grant the relief requested by the petitioner and modified conditions one and two to avoid confusion and facilitate enforcement. Therefore, relief is granted subject to the following conditions:

1. There shall be no large group therapy sessions conducted. No more than one patient, family or couple shall be treated at the office at the same time.
2. The psychiatrist's office hours shall not commence before 8:00 a.m., nor extend beyond 7:00 p.m., nor be in operation more than 20 hours per week, except in emergency situations.
3. Prior to issuance of a certificate of occupancy, a parking plan indicating where patient parking will be provided on the lot shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
4. This relief shall expire in five years from the date of this decision unless the Board of Appeals votes to extend the same.
5. Prior to obtaining a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: 1) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

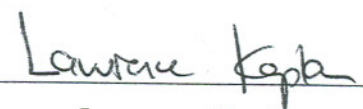
Unanimous Decision of
The Board of Appeals

Filing Date:

A True Copy:

ATTEST


Patrick J. Ward Clerk, Board of Appeals


Lawrence Kaplan

DATED: March 5, 2007